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No 164-10

March 15th, 1965.

Chairman and Members,
The Ontario Committee on Taxation,
88 University Avenue,
Toronto 1, Ontario.

Gentlemen:

The Canadian Institute of Steel Construction (CISC) is the trade association representing the structural steel, open web joist and plate fabricating firms of Canada. It was established in 1930 and operates as a non-profit organization. The Ontario Region of the Institute consists of 17 members who fabricate and supply approximately 85% of the structural steel and steel joists used in the Province of Ontario. The integrated steel mills which have their headquarters in the Province of Ontario are associate members and participate in the activities of the Institute. A list of our membership is attached.

The purpose of this submission is to draw to your attention the inequitable situation which continues to exist with regard to the Ontario Retail Sales Tax as applied to shop fabricated structural steel for buildings, bridges and other structures as compared with the application of the tax to poured-in-place reinforced concrete for such projects. We feel confident that after considering the situation, as outlined herein, you will wish to recommend to the legislature that these competing materials be placed on an equal tax footing.

Prior to the Ontario Retail Sales Tax Act there was no tax on reinforced concrete or structural steel used in the framework of buildings. After the advent of the tax, the reinforced concrete framework attracted tax on the material value only of the following ingredients: cement, additives, reinforcing steel and forming materials. The sand and stone aggregates and water are exempt from tax.

When the tax was first introduced it applied only to the material content of structural steel for buildings. This was the effect of Ruling 3 (3) of the Rules and Regulations, under which structural steel fabricators were classified as Contractor-Retailers. However, in April 1962 structural steel fabricators were classified as Manufacturing Contractors under Ruling 3 (2). The result is that since that time a structural steel framework performing the same function as a reinforced concrete framework attracted tax not only on the value of the structural material but also on the fabricator's factory labour and factory overhead.

Thus the present application of the tax results in increasing the cost of a building framework by approximately 1.5% if constructed of reinforced concrete and by approximately 2.3% if built in steel.

This application of the sales tax clearly violates the principle that new taxes should not impose an inequitable condition between competing materials and industries, which did not exist prior to the application of the tax. This principle is recognized by officials of the Ontario Retail Sales Tax Branch who have said:

> "any rules or regulations that are formulated must be made with a view to levying the tax properly without disturbing the status quo of the industries, as compared with the positions of the industries before the tax was instituted".

A copy of letter dated November 24th,1961 setting out this principle is attached.

We would also point out that the same principle has been recognized by the Federal Government which introduced section 29 (2b) (d) of the Excise Tax Act in 1963 for the specific purpose of according to structural steel for buildings the same tax treatment as that accorded to reinforced concrete for buildings. In introducing this legislation the Minister of Finance said -

> "We have tried to take into account those situations where the imposition of the sales tax on building materials may result in serious competitive inequalities where goods fabricated off the site of construction compete directly with goods that can be constructed on the site". (Hansard, July 30/63)

The full text of the Hon. Mr. Gordon's remarks is attached. Parliament agreed and passed the amending legislation.

The Canadian Construction Association in its brief to you of January 31st,1964 stressed the importance of removing inequities such as now exist in the present Ontario Sales Tax legislation between competing building materials and methods of construction, i.e. off site and on site methods of construction.

The Canadian Construction Association pointed out that the Ontario tax base and the Federal tax base are arrived at by two different and complicated procedures and stated:

> "This very confusing and inequitable situation should be rectified

than the present application of the tax results in increasing the cost of a building framework by approximately 1.8% if constructed of reinforced concrete and by approximately 1.3% if built in steel.

This application of the rules has clearly violated the principle that new taxes should not impose an inequitable condition between competing materials and technology, which did not exist prior to the application of the tax. This principle is recognized by officials of the Bureau Metals Tax Branch who have said:

"Any rules or regulations that are formulated must be made with a view to levying the tax properly without discriminating the status quo of the industries, or conferred with the positions of the industries before the tax was instituted".

A copy of letter dated November 29th, 1951 quoting what this principle is attached.

We would also point out that the same principle has been recognized by the Federal Government which introduced section 39 (2b) (A) of the Excise Tax Act in 1949 for the specific purpose of according to structural steel for building the same tax treatment as that accorded to reinforced concrete for building. In introducing this legislation the Minister of Finance said -

"We have tried to look into matters like situations where the imposition of the sales tax on building materials may result in various competitive inequalities where goods subjected to the rate of contractors equipment directly into goods that can be constructed on the site". (Hansard, July 20/49)

The full text of the Hon. Mr. Gardiner's remarks is attached. Parliament agreed and passed the amending legislation.

The Canadian Construction Association in its brief to P.M. of January 31st, 1952 stressed the importance of removing inequities such as now exist in the present Canada Sales Tax legislation between competing building materials and methods of construction, i.e. off site and on site methods of construction.

The Canadian Construction Association pointed out that the Canada Tax Base and the Federal Tax Base are arrived at by two different and complicated procedure and stated:

"This very confusing and inequitable situation should be rectified

since the administrative costs are disproportionate to the total revenue involved".

We respectfully suggest that our submission merits your serious consideration and appropriate recommendations to the legislature. If we can be of any assistance by appearing before you or by providing any additional information we would be most happy to do so.

Yours very truly,

P. E. Savage
President
CANADIAN INSTITUTE OF STEEL CONSTRUCTION

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Yours very truly,

P. E. Bevege
President

CANADIAN INSTITUTE OF STEEL CONSTRUCTION

CANADIAN INSTITUTE OF STEEL CONSTRUCTION

Members located in Ontario

Anthes Steel Products (1962) Limited,
Toronto

Bomac Steel Company Limited,
Cooksville

Bridge & Tank Company of Canada Limited,
Hamilton

Canada Iron Foundries, Limited, Eastern Structural Division,
Ottawa, Toronto

Dominion Bridge Company Limited,
Ottawa, Sault Ste.Marie, Toronto

Dosco Industries Limited,
Walkerville

Frankel Structural Steel Limited,
Toronto

Horton Steel Works Limited,
Fort Erie

John T. Hepburn, Limited,
Toronto

Mills Steel Construction Company Limited,
Fort William

Newman Structural Steel Limited,
Welland

Niagara Structural Steel Company Limited,
St. Catharines

Noront Steel Construction Company Limited,
Sudbury

Plate & Structural Steel,
a Division of La France Fire Engines & Foamite Limited,
Toronto

Sparling Division - Procor Limited,
Toronto, Oakville

The Toronto Iron Works, Limited,
Toronto, Trenton

York Steel Construction Limited,
Toronto

Associate Members located in Ontario

The Algoma Steel Corporation, Limited,
Sault Ste.Marie

Bethlehem Steel Export Company of Canada Limited,
Toronto

Dominion Foundries and Steel, Limited,
Hamilton

Dosco Steel Limited,
Toronto

Slater Steel Industries, Burlington Steel Division,
Hamilton

The Steel Company of Canada, Limited,
Hamilton

United States Steel International Limited,
Toronto

Toronto

Ambro Steel Products (1962) Limited,
Toronto

Dofasco Steel Company Limited,
Conservville

Bridge & Tank Company of Canada Limited,
Hamilton

Canada Iron Foundries, Limited, Eastern Structural Division,
Orléans, Toronto

Dominion Bridge Company Limited,
Ottawa, Sault Ste.Marie, Toronto

Dosco Industries Limited,
Valleyfield

Frankel Structural Steel Limited,
Toronto

Horton Steel Works Limited,
Fort Erie

John T. Hepburn, Limited,
Toronto

Hills Steel Construction Company Limited,
Fort William

Norman Structural Steel Limited,
Midland

Niagara Structural Steel Company Limited,
St. Catharines

Monroe Steel Construction Company Limited,
Sudbury

Plate & Structural Steel,
a Division of La Presse Ltée Limited & Fonsate Limited,
Toronto

Spurling Division - Procor Limited,
Toronto, Oakville

The Toronto Iron Works, Limited,
Toronto, Preston

York Steel Construction Limited,
Toronto

Associate Members located in Alberta

The Algoma Steel Corporation, Limited,
Sault Ste.Marie

Dominion Bridge Company of Canada Limited,
Toronto

Dominion Foundries and Steel, Limited,
Hamilton

Dosco Steel Limited,
Toronto

Slater Steel Industries, Burlington Steel Division,
Hamilton

The Steel Company of Canada, Limited,
Hamilton

United States Steel International Limited,
Toronto

July 30, 1963. (Pages 2792-3) - The Minister of Finance:

"Perhaps before this particular amendment is moved I might also refer to the question of certain building materials that are competitive. We have tried to take into account those situations where the imposition of the sales tax on building materials may result in serious competitive inequality where goods fabricated off the site of construction compete directly with goods that can be constructed on the site. In line with this purpose the bill contains a provision to provide that prefabricated buildings will not be taxable on their selling price, and the manufacturers of such buildings will have to pay sales tax on the materials they purchase. Similarly the manufacturers of structural building sections such as precast, prestressed concrete building sections or pillars are not regarded as manufacturers for sales tax purposes because these products compete with concrete sections that can be poured as the building is erected. The same rule will apply for manufacturers of concrete or cinder building blocks because these compete with poured concrete walls.

It has now been brought to our attention that a similar situation exists with respect to structural steel for buildings, which of course competes directly with prestressed forms. It is usual for the steel that goes into a building to be designed and cut to size on the premises of fabricating companies and delivered to the building site ready for erection. This steel competes directly with reinforced concrete poured on the site. In the case of concrete poured on site the labour involved does not enter into the base for sales tax. In the case of steel the labour involved in fabricating does become part of the price that is subject to sales tax. It is therefore proposed that an amendment be made which will have the effect of excluding from the base for sales tax that part of the selling price of steel which arised from the fabrication work done off the building site. It will take the form of a further paragraph to the new subclause (2b) added by clause 2 on page 1. The effect of this amendment will be that fabricators of structural steel for buildings will buy steel on which the sales tax is imposed but will not have to pay sales tax on the fabricated structural steel they sell".

July 30, 1963. (Pages 2792-3) - The Minister of Finance:

"Perhaps before this particular amendment is moved I might also refer to the question of certain building materials that are competitive. We have tried to take into account those situations where the imposition of the sales tax on building materials may result in serious competitive inequality where goods fabricated off the site of construction compete directly with goods that can be constructed on the site. In line with this purpose the bill contains a provision to provide that prefabricated buildings will not be taxable on their selling price, and the manufacturers of such buildings will have to pay sales tax on the materials they purchase. Similarly the manufacturers of structural building sections such as precast, prestressed concrete building sections or pillars are not regarded as manufacturers for sales tax purposes because these products compete with concrete sections that can be poured as the building is erected. The same rule will apply for manufacturers of concrete or cinder building blocks because these compete with poured concrete walls.

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ONTARIO
TREASURY DEPARTMENT
THE RETAIL SALES TAX BRANCH
OFFICE OF THE COMPTROLLER OF REVENUE
500 UNIVERSITY AVENUE
TORONTO 2, ONTARIO.

NOV 23 1961

November 24, 1961

Canadian Institute of Steel Construction, Inc.
388 Yonge Street
Toronto 1, Ontario

Attention Mr. T.J. Granton, P.Eng.

Dear Sirs:

I regret that it has taken so long to answer your letter of November 1, 1961.

A contract does determine the incidence of the tax. Since a contractor is the person who works on and improves real property, we cannot escape the fact that a supply contract is termed a sale of the tangible personal property. The erector in this case would be the person who would fit the qualifications of a contractor under the Act and the Regulations. In a case of a supply and install contract, the person is deemed to be the contractor from the beginning to the end and the incidence of tax falls at various levels depending upon the nature of the contractor as enumerated in Ruling 3, item 2, (a),(b), (c) or (d).

In the case of where a contractor receives a supply and install contract and sublets the installation, the original contractor who received the supply and install contract could be termed to be the contractor for all intents and purposes and the installer would be the agent. There is no sale of tangible personal property in that case and the tax would apply either to the raw material used by the fabricator or the cost of the fabricated items or the fair value of the article, depending upon the actions of the contractor as defined in Ruling 3, item 2, (a),(b),(c) or (d).

As mentioned before we feel that a change must be made to the manufacturing contractors so that we may alleviate problems existing under the present rulings regarding manufacturing contractors. Some further information would be required before the idea could be finalized.

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I would like to know if any of the members of the Canadian Institute of Steel Construction, Inc., are allowed any exemption when they purchase machinery for production and use that may be exempt under Schedule III of the federal Excise Tax Act as production machinery.

There are many points to be clarified in the future and I feel that any regulation or ruling can be improved upon so that it will enable the administration to carry on in a more efficient fashion. At the same time, any rules or regulations that are formulated must be made with a view to levying the tax properly without disturbing the status quo of the industries as compared with the positions of the industries before tax was instituted.

As mentioned before, we require information in order that we may reach an equitable solution to the various problems. We feel that up to this time we do not have the information necessary to formulate the policy and we request that your Institute could possibly supply it, together with some comparative costs for our information.

Yours faithfully,

Andrew Severn, C.A.
Director

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